

## Department of Energy

## 970.1504-3-1

(f) Where the Procurement Executive, or designee, has approved a base fee, the Classification Factors shall be reduced, as approved by the Procurement Executive, or designee.

(g) Any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor.

(h) All management and operating contracts awarded on a cost-plus-award-fee basis shall set forth in the contract, or the Performance Evaluation and Measurement Plan(s) required by the contract clause at 48 CFR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount, a site specific method of rating the contractor's performance of the contract requirements and a method of fee determination tied to the method of rating.

(i) Prior approval of the Procurement Executive, or designee, is required for an annual total available fee amount exceeding the guidelines in paragraph (c) of this subsection.

(j) DOE Operations/Field Office Managers must ensure that all important areas of contract performance are specified in the contract or Performance Evaluation and Measurement Plan(s), even if such areas are not assigned specific weights or percentages of available fee.

### **970.1504-1-10 Special considerations: Fee limitations.**

In situations where the objective performance incentives are of unusual difficulty or where the successful completion of the performance incentives would provide extraordinary value to the Government, fees in excess of those allowed under 48 CFR 970.1504-1-5 and 48 CFR 970.1504-1-9 may be allowed with the approval of the Procurement Executive, or designee. Requests to allow fees in excess of those provided under other provisions of this fee policy must be accompanied by a written justification with detailed supporting rationale as to how the specific circumstances satisfy the two criteria listed in this subsection.

### **970.1504-1-11 Documentation.**

The contracting officer shall tailor the documentation of the determina-

tion of fee prenegotiation objective based on 48 CFR 15.406-1, Prenegotiation objectives, and the termination of the negotiated fee in accordance with 48 CFR 15.406-3, Documenting the negotiation. The contracting officer shall include as part of the documentation: the rationale for the allocation of cost and the assignment of Facility/Task Categories; a discussion of the calculations described in 48 CFR 970.1504-1-5; and discussion of any other relevant provision of this subsection.

### **970.1504-2 Price negotiation.**

(a) Management and operating contract prices (fee) and DOE obligations to support contract performance shall be governed by:

(1) The level of activity authorized and the amount of funds appropriated for DOE approved programs by specific program legislation;

(2) Congressional budget and reporting limitations;

(3) The amount of funds apportioned to DOE;

(4) The amount of obligational authority allotted to program officials and Approved Funding Program limitations; and

(5) The amount of funds actually available to the DOE operating activity as determined in accordance with applicable financial regulations and directives.

(b) Funds shall be obligated and made available by contract provision or modification after the funds become available for obligation for payment to support performance of DOE approved projects, tasks, work authorizations, or services.

(c) Contractor expenditures shall be limited to the overall amount of funds available and obligated on the contract. As prescribed at 48 CFR 970.3270(b), the clause at 48 CFR 970.5232-4, Obligation of Funds, is used for this purpose.

### **970.1504-3 Documentation.**

#### **970.1504-3-1 Cost or pricing data.**

(a) The certification requirements of 48 CFR 15.406-2 are not applied to DOE cost-reimbursement management and operating contracts.